

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MARK PICOZZI,

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 2:22-cv-01011-ART-EJY

**ORDER**

Pending before the Court are Plaintiff's Motion to Compel Nevada Department of Corrections Staff to Electronically File Documents (ECF No. 86) and Motion to Preserve a Video of Certain Activity at High Desert State Prison (ECF No. 97). On April 11, 2023, Defendants filed a response to Plaintiff's Motion to Compel. ECF No. 96. The Motion to Compel is premature and the Motion to Preserve Video must be directed to Defendants. For these reasons, Plaintiff's Motions are denied.

**I. DISCUSSION**

**A. Plaintiff's Motion to Compel is Denied.**

Plaintiff contends his access to the courts and ability to litigate his case is being obstructed by employees at High Desert State Prison ("HDSP") as the employees did not return to him the physical copy of one of his motions (ECF No. 80) after it was electronically filed. ECF No. 86 at 1. Plaintiff also asks the Court "to subpoena the electronic filings" that he had to sign for relating to the three motions Plaintiff filed on March 13, 2023. *Id.*

Prison records show all three of the motions described by Plaintiff (ECF Nos. 78, 79, 80) were filed electronically and returned to Plaintiff. ECF No. 96-1 at 31-33. Further, there are receipts dated March 20, 2023, signed by Plaintiff, showing copies or the original of each filed motion was returned to Plaintiff. *Id.* The Court does not doubt the authenticity of the record or the sworn declaration of the Law Library Supervisor who states there has never been any conspiracy to withhold documents from Plaintiff. ECF No. 96-2 at 4.

1 The Court also reminds Plaintiff that under United States District Court for the District of  
 2 Nevada Local Rule 16-1(b), the Court will enter a scheduling order within 30 days after the first  
 3 Defendant answers his Complaint or otherwise appears by filing a motion. Defendants filed an  
 4 Answer on April 4, 2023 (ECF No. 92), meaning that a scheduling order will be entered by the  
 5 Court no later than May 4, 2023. Once the discovery period starts, Plaintiff will be able to send  
 6 requests for documents and interrogatories (fact questions) to Defendants, through their counsel,  
 7 under Federal Rules of Civil Procedure 33 and 34.

8 Plaintiff is advised he is not to file discovery requests or responses with the Court and that  
 9 any motion to compel discovery will not be considered by the Court unless Plaintiff has made a  
 10 good faith effort to resolve the issue with the Defendants before he files the motion. Local Rule  
 11 16-1(b), 26-7(b), and 26-8; *see also Jacobsen v. Filler*, 790 F.2d 1362, 1364-65 (9th Cir. 1986)  
 12 (holding that *pro se* parties are not excused from following the rules and orders of federal courts).

13 B. Plaintiff's Motion for Preservation of Evidence is Denied.

14 In his Motion to Preserve evidence, Plaintiff alleges video footage of the HDSP Activity  
 15 Room on March 30, 2023, between the hours of 8:45 and 10:00 a.m. is crucial to Plaintiff's Motion  
 16 to Amend / File a Supplemental Complaint. ECF No. 97 at 1. A review of Plaintiff's Motion to  
 17 Amend shows that Plaintiff requests relief under Federal Rule of Civil Procedure 15(d) to  
 18 supplement his Complaint by adding several claims and individual defendants arising from events  
 19 that occurred on March 30, 2023. ECF No. 98 at 1.

20 While Defendants have a general duty to preserve relevant evidence under Federal Rule of  
 21 Civil Procedure 37(e), notices to preserve evidence are sent, for example, by a plaintiff to a  
 22 defendant. Here, that means Plaintiff should write Counsel for Defendants a letter telling defense  
 23 counsel what he wants Defendants to preserve. If Defendants fail to preserve relevant evidence,  
 24 then Plaintiff may bring a motion before the Court arguing he was prejudiced as a result of  
 25 Defendants' failure. The Court does not typically issue preservation notices.<sup>1</sup>

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 28 <sup>1</sup> The Court notes Defendants are now on notice of Plaintiff's request to preserve video involving events that allegedly occurred on March 30, 2023 in the HDSP Activity Room as described in Plaintiff's pending Rule 15(d) Motion.

**II. ORDER**

IT IS HEREBY ORDERED that Plaintiff's Motion to Compel Nevada Department of Corrections Staff to Electronically File Documents (ECF No. 86) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Preserve a Video of Certain Activity at High Desert State Prison (ECF No. 97) is DENIED without prejudice.

DATED this 12th day of April, 2023.

  
ELAYNA J. YOUCHAH  
UNITED STATES MAGISTRATE JUDGE